

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED

JUN 26 2017


CLERK

TRAVIS RAY MCPEEK,

Plaintiff,

vs.

UNKNOWN PENNINGTON COUNTY
OFFICERS, SGT. CASS, JAIL
ADMINISTRATOR PAYER,

Defendants.

4:17-CV-04015-RAL

OPINION AND ORDER
DENYING MOTION TO
COMPEL ACCESS TO
THE LAW LIBRARY

Plaintiff Travis R. McPeek ("McPeek"), an inmate at the Yankton County Jail in Yankton, South Dakota, filed this lawsuit pursuant to 42 U.S.C. § 1983. Doc. 8. McPeek now moves this Court to compel defendants to grant him access to the law library. Doc. 28.

This Court cannot grant McPeek this relief through a motion because it represents a claim he did not raise in his original complaint. If McPeek wishes to add a claim of denial of access to the courts, he may seek this Court's permission to do so through a motion to amend his complaint. If he does so, McPeek must "attach a copy of the proposed amended pleading to [his] motion to amend with the proposed changes highlighted or underlined so that they may be easily identified." D.S.D. Civ. LR 15.1. This Court will then decide whether to grant McPeek's motion and allow him to amend his complaint.

McPeek may also file another lawsuit and raise his claim of denial of access to the courts in that case.

In order to state a claim of denial of access to the courts, McPeek “ ‘must establish the state has not provided an opportunity to litigate a claim challenging [his] sentence or conditions of confinement in a court of law, which resulted in actual injury, that is, the hindrance of a nonfrivolous and arguably meritorious underlying legal claim.’ ” *Hartsfield v. Nichols*, 511 F.3d 826, 831–32 (8th Cir. 2008) (quoting *White v. Kautzky*, 494 F.3d 677, 680 (8th Cir. 2007)). To show actual injury, McPeek “ ‘must ‘demonstrate that a nonfrivolous legal claim ha[s] been frustrated or was being impeded.’ ” *Id.* (quoting *White*, 494 F.3d at 680). It is not enough that he is being denied access alone. *See Klinger v. Department of Corrections*, 107 F.3d 609, 617 (8th Cir.1997) (to prevail on a claim of denial of access to the courts, prisoner must show actual injury or prejudice even if denial of access to law library is complete and systematic).

Accordingly, it is

ORDERED that McPeek’s motion to compel access to the law library (Doc. 28) is denied.

Dated June 26th, 2017.

BY THE COURT:



ROBERTO A. LANGE
UNITED STATES DISTRICT JUDGE